

## Notification of Conflict of Interest Referral

For use in cases involving possible violations of 18 U.S.C. §§ 203, 205, 207-209 by current or former executive branch employees only; see reverse for summary of statutory/regulatory background. Please return directly to: U.S. Office of Government Ethics, 1201 New York Ave. NW, Suite 500, Washington, DC 20005-3917. Phone: Associate Director for Program Reviews (202) 482-9270. FAX: (202) 482-9238.

Agency Referring the Case SEC OIG	Agency Case or Referral Number OIG-560	Case Referred to: <input checked="" type="checkbox"/> DOJ, Public Integrity Section, Criminal Division <input type="checkbox"/> U.S. Attorney for (district) _____ <input type="checkbox"/> DOJ, other _____
Date of Referral to DOJ 09/19/2011	Name of Employee Involved in Case (optional), Agency, and Agency Component Where he/she was Employed. David M. Becker, former General Counsel and Senior Policy Director, U.S. Securities & Exchange Commission	

### PART I ETHICS TRAINING

Is there any evidence the individual received ethics training? ☐ YES ☐ NO ☒ UNCLEAR

### PART II STATUTE(S) INVOLVED IN THIS CASE

Please check the appropriate box for the statute(s) involved in this case, then complete the rest of the information for the statute(s).

☐ **18 U.S.C. § 203 (Compensation for Representation Affecting the Government)**

Federal entity before which representation occurred: \_\_\_\_\_

Compensated representation on behalf of: \_\_\_\_\_

Were representational services rendered or to be rendered: ☐ by the employee ☐ or by another?

☐ **18 U.S.C. § 205 (Representation Affecting the Government)**

Federal entity before which representation occurred: \_\_\_\_\_

Representation on behalf of: \_\_\_\_\_

☐ **18 U.S.C. § 207 (Post-Employment)**

Federal entity before which representation occurred: \_\_\_\_\_

Representation on behalf of: \_\_\_\_\_

Was the communication/representation: ☐ oral? ☐ and/or written?

☐ Former employee termination service before January 1, 1991. Check subsections involved:

☐ 207(a) ☐ 207(b)(i) ☐ 207(b)(ii) ☐ 207(c)

☐ Former employee termination service on or after January 1, 1991. Check subsections involved:

☐ 207(a)(1) ☐ 207(a)(2) ☐ 207(b) ☐ 207(c) ☐ 207(d) ☐ 207(f)

If 207(b) or 207(f) is checked, was behind-the-scenes aid or advice involved? ☐ Yes ☐ No

☒ **18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest)**

Does the case involve the financial interest: ☒ of the employee? ☐ of the employee's spouse?

☐ Minor child? ☐ A firm with which the employee was negotiating for employment?

☐ Other? (specify) \_\_\_\_\_

Was a waiver sought? ☐ Yes ☒ No Was it granted? ☐ Yes ☐ No

Was the employee required to file a financial disclosure form? ☒ Yes ☐ No If yes, check form involved:

☒ SF 278 ☐ OGE Form 450 ☐ Other (specify) \_\_\_\_\_

If so, was the basis for the interest disclosed on the financial disclosure form? ☐ Yes ☒ No

☐ **18 U.S.C. § 209 (Supplementation of Salary)**

Type of supplementation (meals, travel, cash, etc.): \_\_\_\_\_

Value of supplementation: \$ \_\_\_\_\_ Number of supplements: \_\_\_\_\_

☐ **Additional Statutes Involved in Conflict of Interest Referrals**

Was 18 U.S.C. § 201 (bribery/gratuity) involved? ☐ Yes ☐ No

Was 5 U.S.C. App. (Ethics in Government Act) § 501 (outside earned income) involved? ☐ Yes ☐ No

Was 5 U.S.C. App. (Ethics in Government Act) § 502 (outside employment) involved? ☐ Yes ☐ No

Was 18 U.S.C. § 1001 (false statements) involved? ☐ Yes ☐ No

Was 5 U.S.C. App. (Ethics in Government Act) § 101 et seq. (Financial disclosure) involved? ☐ Yes ☐ No

Other (list) \_\_\_\_\_

Agency Contact/Telephone Number

Mary Beth Sullivan, Counsel to the Inspector General, 202.551.6039

Date

11/17/2011



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## Statutory/Regulatory Background

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28 U.S.C. § 535 requires every department or agency to report to the Attorney General any information, allegations, or complaints relating to violations of title 18 of the United States Code involving Government employees, including possible violations of 18 U.S.C. § 207 by former Government employees. The Director of the Office of Government Ethics (OGE), in accordance with 5 U.S.C. App. § 402(e)(2), has promulgated regulations at 5 C.F.R. § 2638.603 requiring agencies to concurrently notify the Director when any matter involving a violation of 18 U.S.C. §§ 203, 205, 207, 208, and/or 209 is referred to the Department of Justice pursuant to 28 U.S.C. § 535. Such notification may be accomplished by providing a copy of the referral document or by submitting this optional form, unless such notification would otherwise be prohibited by law. OGE regulations also require that the department or agency subsequently notify the Director of the referral's disposition, including any disciplinary or corrective action taken by the department or agency. 5 C.F.R. § 2638.603(c). Information relating to the disposition of a referral may be communicated to the Director in writing.

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### PART III ADDITIONAL AGENCY COMMENTS (if any):

Please see attached.

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### PART IV DISPOSITION OF REFERRAL (OGE use only):

☐ DOJ declined prosecution.

☐ DOJ initiated prosecution.

Resolution:

Agency disciplinary or corrective action, if any:

### Part III – Additional Agency Comments

In connection with its investigation of allegations of violations of conflict of interest statutes and regulations by the SEC's former General Counsel, David Becker, on August 31, 2011, the SEC Office of Inspector General ("OIG") sent a letter to the OGE Acting Director and General Counsel requesting guidance from OGE as to whether OGE believed that, based upon the outline of salient facts provided by the OIG, Mr. Becker violated any provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, and whether Mr. Becker's conduct should be referred to criminal authorities based upon possible violations of federal conflict of interest statutes.

On September 8, 2011, the IG held a telephone conversation with the OGE Acting Director and several other attorneys on his staff, during which they discussed the OIG's August 31, 2011 request. On September 9, 2011, the OGE Acting Director sent an e-mail to the Inspector General confirming their conversation. His e-mail stated, in relevant part: "It is my opinion, as well as that of senior attorneys on my staff, that certain matters you discussed in the materials you provided to OGE should be referred to the United States Department of Justice for its consideration. . . . Our recommendation to refer this matter to the Department of Justice is consistent with prior recommendations that OGE has provided to other IG offices in cases involving alleged violations of the criminal conflict of interest statutes."

Accordingly, the OIG referred this matter to the Public Integrity Section, Criminal Division, United States Department of Justice, for consideration under 18 U.S.C. § 208, as reflected in the Report of Investigation in Case No. OIG-560, which was made public on September 19, 2011.